

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

DAVID E. ZIMMER

Respondent

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DOCKET NO. 07-3384-DB

DEBARRING OFFICIAL'S DETERMINATION

By Notice dated September 28, 2006 ("Notice"), the Department of Housing and Urban Development ("HUD") notified the Respondent, DAVID E. ZIMMER, that HUD was proposing the Respondent's debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government. The Notice advised Respondent that the debarment would be for a period of 13 months from the date of the final determination of this proposed action. Issuance of the Notice terminated the suspension that HUD had issued on October 26, 2004, based on Respondent's indictment for violating, inter alia, 18 U.S.C. 641 and 1343. Respondent later pled guilty to two counts in the indictment and was sentenced to 24 months' incarceration and three years' supervised release.

Pursuant to Respondent's request, a hearing on Respondent's proposed debarment was held in Washington, DC on February 14, 2007, before the Debarring Official's Designee, Mortimer F. Coward. Respondent was unable to be present in person at the hearing but testified and otherwise participated by phone. Stanley Field appeared on behalf of HUD. At the close of the hearing, Respondent was given an opportunity to provide further written information that could be considered in the Debarring Official's Determination. The Debarring Official's Designee advised Respondent that the record would be held open for a week until February 21, 2007, for submission of the information that Respondent represented Respondent would obtain for inclusion in the record. The Debarring Official's Designee received no submissions from Respondent after the close of the hearing. Consequently, this Determination is based on the record as it existed at the close of the hearing on February 14, 2007.

I have decided, pursuant to 24 C.F.R. part 24, to debar Respondent from future participation in procurement and non-procurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, for a

period of 13 months from the date of this Notice. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The notice of suspension issued by HUD dated October 26, 2004.
- (2) The Notice of Proposed Debarment and Termination of Existing Suspension issued by HUD dated September 28, 2006.
- (3) Respondent's October 20, 2006, response to HUD's September 28, 2006, notice.
- (4) Respondent's letter of November 17, 2006, addressed to Stanley E. Field, Esquire.
- (5) HUD's Pre-hearing Brief in Support of a Thirteen Month Debarment of the Respondent, filed January 24, 2007 (including all attachments and exhibits thereto).
- (6) Respondent's Pre-hearing Brief in Opposition of a Thirteen Month Debarment of the Respondent, filed January 30, 2007 (including all attachments and exhibits thereto).
- (7) The tape recording of the February 14, 2007, telephonic hearing.

As noted above, HUD proposed Respondent's debarment for 13 months based upon Respondent's conviction following his guilty plea in the U.S. District Court for the Southern District of New York to the offense of theft of public money, property or records in violation of 18 U.S.C. 641 and 2. The uncontroverted evidence in the information established that Respondent submitted fraudulent applications to the Empire State Development Corporation (ESDC) for September 11 related grant money. The funding for these grants was provided by HUD through the Community Development Block Grant (CDBG) program. One of the fraudulent applications resulted in the ESDC sending via wire transfer a grant award of \$270,000.00 to the bank account of DZ Investments Inc., a company of which Respondent was president but which was not eligible to receive the grant. The second fraudulent application caused the ESDC to wire transfer a grant of \$180,000.00 to the account of DABL Smokeshop, Inc., a corporation of which Respondent's father was president. DABL Smokeshop, Inc. was not entitled to receive the grant.

In Respondent's appeal of HUD's action to debar him, Respondent submits that he made full restitution of the fraudulently obtained \$450,000.00 grant money. The record reveals also that a criminal fine of \$10,000.00 imposed on Respondent at sentencing remains outstanding. Respondent fully acknowledges his culpability in this matter, but argues on appeal that his voluntary repayment of the fraudulently obtained \$280,000.00 demonstrates that he has accepted responsibility for his criminal actions. Further, Respondent argues that "prior irresponsible actions should not outweigh [his] voluntary act of making full restitution." For his part, Respondent recommends that he not be debarred or, as an alternative punishment, the thirteen-month debarment urged by Government Counsel be made retroactive to the date of his criminal conviction, April 1, 2005.

Findings of Fact

1. Respondent was a person involved in the illegal receipt and transfer of HUD funds to entities that were ineligible to receive such funds.

2. Respondent pleaded guilty to his participation in the illegal transaction.
3. Respondent was convicted of offenses related to his part in the illegal transaction.
4. Respondent was sentenced to two years' imprisonment and three years' supervised release for his criminal conduct.
5. As part of his criminal sentence, Respondent was ordered to pay restitution.
6. Respondent has made restitution of the fraudulently obtained \$450,000.00, which fully satisfies the District Court's restitution order.
7. Respondent offered to cooperate with the government in its investigation of this and related cases.
8. Respondent offered at his hearing to provide written information from his present employer with respect to his present employment.
9. Respondent continues to serve that part of his sentence that subjects him to supervised release.

Conclusions

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondent was a participant in a covered transaction as defined in 24 CFR part 24.
2. Respondent admits his wrongdoing and fully accepts responsibility for his criminal conduct.
3. Respondent's involvement in this matter casts serious doubt with respect to his integrity and honesty and the Department has a responsibility to protect federal funds and the public interest.
4. Respondent's admission of his participation in the illegal scheme to defraud HUD of federal funds, his offer to cooperate with the government, and his making full restitution of the fraudulently obtained \$450,000.00 are mitigating factors.
5. Respondent provided no independent evidence to support a claim of present responsibility and his voluntary agreement to repay funds he acquired through fraud is not persuasive as to his present responsibility.
6. Respondent's claims of his employment during his suspension and before his incarceration and since his release are uncorroborated in the record.
7. Respondent's conviction provides the basis for debarment under 24 CFR 800(a).

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined to debar Respondent for 13 months commencing on the date of this Determination. As provided in 24 CFR 870 (b)(iv), Respondent's debarment "is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: 4 April 2007

Henry S. Czauski
Henry S. Czauski
Debarring Official
Departmental Enforcement Center